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NOTES.

ADMIRALTY COURTS—EFFECT OF STATE DECISIONS—LIABILITY OF MUNICIPAL CORPORATIONS FOR THE NEGLIGENCE OF THEIR FIRE-TUGS.—The Supreme Court of the United States by a majority of one has decided that a municipal corporation is liable in a court of admiralty in a suit *in personam* for the negligence of one of its fire-tugs whether it is liable in the courts of the State where the tort occurred or not—*Workman* v. *The Mayor, etc., of New York*, 21 Supreme Court Reporter, 212. The majority opinion is based on the ground that a United States court of admiralty, administering, as it does, a system of law peculiarly its own, and having by the constitution an exclusive jurisdiction (Art. 3, § 2), is never bound to apply local law, as the United Courts of Common Law and Equity, which enforce the same system of law as the State courts, often have to do. For this reason the Court holds that an admiralty court is not bound by *Detroit* v. *Osborne*, 135 U. S., 492, which held the local law of municipal corporations applicable in United States courts of common law. This view of the freedom of admiralty courts is fully borne out by the cases—*Liverpool & G. W. Steam Co.* v. *Phenix Ins. Co.*, 129 U. S., 397 (1889); *Butler* v. *Boston & S. S. S. Co.*, 130 U. S., 527 (1889); *The Max Morris*, 137 U. S., 1 (1890), *The J. E. Rumbell*, 148 U. S., 1 (1893). Mr. Justice White, who writes the majority opinion, then goes on to show that the logic of the maritime law cannot conceive of a legal person, *capable of being sued*, whose liability for a tort in a particular instance depends on the nature of the act which produces the injury. On page 219 he says: "It results that in the maritime law, the public nature of the service upon which a vessel is engaged at the time of the commission of a maritime tort affords no immunity

from liability in a court of admiralty where the Court has jurisdiction. This being so, it follows that as the municipal corporation of the City of New York, unlike a sovereign, was subject to the jurisdiction of the Court, the claimed exemption from liability, asserted in the case at bar, because of the public nature of the service upon which the fire-boat was engaged—even if such a claim for the purpose of the case be conceded—was without foundation in the maritime law and, therefore, afforded no reason for denying redress in a court of admiralty for the wrong which the courts below both found to have been committed."

The dissenting Judges say they know of no case where an action of tort is maintainable in admiralty when there is no liability at common law, having in the preceding paragraph quoted *The Max Morris* (*supra*) and *Atlee* v. *Northwestern Union Packet Co.*, 21 Wall., 389 (1874), as cases where in admiralty contributory negligence of the plaintiff was no defence. They quote *the Harrisburg*, 119 *U. S.*, 199 (1886), as illustrating their position. That case held that the rule of non-survivorship of tort actions should be the rule of admiralty as well as the common law. But Chief Justice Waite adopted the common-law rule in that case because it was a good working rule, and because no admiralty precedents bound him. He nowhere states that he felt himself under compulsion to follow the common law. Granting that in the principal case there were no admiralty precedents (though the majority of the Judges states that there were), the fact that Chief Justice Waite, when he was not bound to do so, chose a universal common-law rule for the admiralty law, is no reason why under other circumstances and when equally free the Court should choose a local rule of State law. Later on the minority say (page 227): "The authority of the fire department and its members as to both kinds of property (buildings and ships) is derived from the municipal and not from the maritime law. Might not this be a very good reason why the maritime law should not recognize such authority or at least any accompanying immunity?

The result of the decision is to establish a uniform rule for the admiralty courts of the United States, a rule commendable not merely for its universality, but for its justice. It will not hamper the efficiency of fire-tugs, for they will not be liable save for lack of proper care *under the circumstances*, and part of those circumstances to be taken into consideration is the emergency in case of fire and the necessity for great promptness of action. It is to be noted that the Court does not decide that an action *in rem* with its inevitable attachment would lie against the vessel. That point is reserved. When the injury by a fire-tug is negligent and unnecessary, why should the city, its owner, not be held, provided the danger to public interests which an attachment of the boat might cause, is avoided? The argument of the minority was for the application of a harsh and unjust rule when neither precedent nor expediency demanded it. That the Court should have rejected their argument is a distinct step in the right direction.